NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

Russell Nelson, Inc. *and* Operative Plasterers and Cement Masons Local Union No. 538. Case 17–CA–025175

June 26, 2012

SUPPLEMENTAL DECISION AND ORDER BY CHAIRMAN PEARCE AND MEMBERS GRIFFIN AND BLOCK

The Acting General Counsel seeks default judgment in this case on the ground that the Respondent, Russell Nelson, Inc., has failed to file an answer to the compliance specification. On November 2, 2011, the Board issued a Decision and Order¹ that, among other things, ordered the Respondent to make unit employees whole for any loss of earnings and other benefits suffered as a result of the Respondent's unlawful conduct in violation of Section 8(a)(5) and (1).

A controversy having arisen over the amounts due the discriminatees, on February 24, 2012, the Regional Director issued a compliance specification and notice of hearing alleging the amount of backpay due under the Board's Order and notifying the Respondent that it should file a timely answer complying with the Board's Rules and Regulations. Although service of the compliance specification was proper, the Respondent failed to file an answer.²

On April 2, 2012, the Acting General Counsel filed with the Board a Motion to Transfer Proceeding to Board and for Default Judgment, with exhibits attached. On April 3 and 4, 2012, the Board issued an Order Transferring the Proceeding to the Board and a Notice to Show Cause, and a Corrected Order Transferring Proceeding to the Board and Notice to Show Cause, respectively, why the motion should not be granted. The Respondent failed to file a response. The allegations in the motion and the compliance specification are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on the Motion for Default Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that a respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) provides that if the respondent fails to file an answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

Here, according to the uncontroverted allegations of the motion for default judgment, the Respondent has failed to file an answer to the compliance specification. In the absence of good cause for the Respondent's failure to file an answer, we deem the allegations in the compliance specification to be admitted as true and grant the Acting General Counsel's Motion for Default Judgment. Accordingly, we conclude that the net backpay due the discriminatees is as stated in the compliance specification, and we will order the Respondent to pay those amounts, plus interest accrued to the date of payment.

ORDER

The National Labor Relations Board orders that the Respondent, Russell Nelson, Inc., Leawood, Kansas, its officers, agents, successors, and assigns, shall make whole the individuals named below, by paying them the amounts following their names, plus interest accrued to the date of payment, plus interest accrued to the date of payment, as prescribed in New Horizons for the Retarded, 283 NLRB 1173 (1987), computed daily as prescribed in Kentucky River Medical Center, 356 NLRB

¹ 357 NLRB No. 107.

² The Acting General Counsel's motion for default judgment indicates that the compliance specification was served by certified mail on February 24, 2012, upon the last known address on file for the Respondent at 12120 State Line Road, #314, Leawood, Kansas, 66209. However, despite information on the United States Postal Services "Track and Confirm" system that the letter had been delivered on February 25, 2012, the compliance specification was returned to the Regional Office on March 26, 2012, with a notification that the Respondent was no longer located at that address and that the compliance specification could not be forwarded. The Region unsuccessfully attempted to reach the Respondent by telephone to obtain current contact information and also unsuccessfully searched for additional contact information using the CLEAR database, which the Region states is an online investigative platform designed to find personal information contained in public databases. Finally, the Region reviewed the Kansas Secretary of State's website and sent a letter dated March 28, 2012, with the compliance specification enclosed, to the mailing address for the Respondent listed on that website-P.O. Box 11424, Overland Park, Kansas, 66207—noting that an answer had not been filed in response to the compliance specification and extending the deadline to file an answer to April 2, 2012. On March 30, 2012, the letter was returned as "undeliverable." Thereafter, counsel for the Acting General Counsel travelled to the Respondent's Leawood address to attempt personal service of the March 28, 2012 letter. It was discovered that the Leawood address was a United Parcel Service store, which provides mail boxes. Counsel for the Acting General Counsel attempted to leave the March

^{28, 2012} letter with a staff member of the store, but was told that the Respondent no longer maintained a box at that facility.

It is well settled that a respondent's failure or refusal to accept certified mail or to provide for appropriate service cannot serve to defeat the purposes of the Act. See, e.g., *Apollo Detective, Inc.*, 358 NLRB No. 1, slip op. at 1 fn. 2 (2012); *I.C.E. Electric, Inc.*, 339 NLRB 247, 247 fn. 2 (2003), and cases cited therein.

No. 8 (2010), enf. denied on other grounds sub. nom. *Jackson Hospital Corp. v. NLRB*, 647 F.3d 1137 (D.C. Cir. 2011), minus tax withholdings required by Federal and State laws:

Johnson, Ron	\$	898
Stegge, Gaylord		998
Thompson, Ted		998
Vosberg, Timothy		498
TOTAL: ³	\$:	3392

 $^{^{3}}$ The compliance specification inadvertently lists the total of these sums as \$3391.

Dated, Washington, D.C. June 26, 2012

Mark Gaston Pearce,	Chairman
Richard F. Griffin, Jr.,	Member
Sharon Block,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD